

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1802 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NAVNITLAL BHAGWANJI TANNA

Versus

STATE OF GUJARAT

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Appearance:

M/S THAKKAR ASSOC. for Petitioner  
MR SUNIL C PATEL Ld.ADDL. STANDING COUNSEL for  
Respondent No. 4  
MR LR PUJARI, AGP for Respondent Nos. 1 to 3

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 02/05/97

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India the petitioner has brought under challenge the impugned order of detention dated 7/2/1997 passed by the respondent no.2.

2. It has been recited in the grounds of detention Annexure-B that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of supply of commodities essential to the community it became necessary to preventively detain the petitioner u/S. 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of the Essential Commodities Act, 1980 (for short 'the Act'), the petitioner being the partner (but not the Managing Partner) of the Chandan Export Industries and having manufacturing licence and licence as a commission agent as also whole-sale licence as particularised in the grounds of detention alongwith the other partners of the aforesaid partnership firm (Chandan Export Industries). The commodity Rayda oil, etc. stood included in the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 and the same is in force. It has inter-alia been recited that on 19/1/1997 the District Supply Officer, Junagadh and the District Supply Superintendent made inquiry and found that the accounts of the stock register of the firm were written upto 8/1/1997 and that the firm did not maintain day-to-day true and correct accounts and thereby committed breach of condition no. 4 of the aforesaid Order of 1981. The detaining authority has referred to number of such breaches and violations vis-a-vis recording of the incoming goods and the sale of oil seeds and/or the oil of Rayda in the grounds of detention with reference to the documents including the stock register. The detaining authority has inter-alia stated in ground no. 7(1) that the purchase bill dated 9/8/1996 of stock of 10,110 Kgs. of Rayda (rape-seeds) received from the dealer Shri Amitkumar Jitendrakumar Thakkar resident of village Deesa, District Banaskantha was noticed. One octroi receipt was also found alongwith the same. The bill contained a reference to truck No. GJ-11-T-7742, as also a weigh slip no. 02799 dated 10/8/1996 narrating the weighment made at Atlas Soya Weigh Bridge, Junagadh. It has been alleged that the said stock of Rayda was purchased by the aforesaid firm Chandan Export Industries, but no income gate pass appears to have been issued. It has also been recited that the said stock was not taken on the stock register and accordingly breach of the conditions of the licence has been committed.

3. In respect of this ground of detention appearing in the grounds of detention the petitioner has contended in para. (u) as under :-

"It is submitted that the detaining authority has considered the register of income gate pass and

also the stock register for the month of August, 1996. However, the detaining authority has failed to supply the stock register for the month of August 1996 alongwith the grounds of detention and, therefore, the petitioner has been deprived of making an effective representation at the earliest opportunity. Thus, the continued detention of the petitioner becomes violative of Art. 22(5) of the Constitution of India."

In support of the aforesaid ground of challenge against the continued detention under the impugned order of detention reference has first been made to a decision of the Apex Court in the case of Virendra v/s. State of Maharashtra reported in AIR 1981 SC 1909, holding that the documents and the materials forming basis of the order of detention, if not supplied to the detenu, alongwith the order of detention, the order would be rendered void as held in Smt. Ichhu Devi Choraria v/s. Union of India reported in AIR 1980 SC 1983 and in Smt. Shalini Soni v/s. Union of India reported in AIR 1981 SC 431. Reliance has also been placed on Kiritkumar v/s. Union of India reported in AIR 1981 SC 1621.

4. It has further been submitted that in the present case the concerned authorities have violated the provisions of the very statute, namely, section 8(1) of the Act. The provision would read as under :-

"8. Grounds of order of detention to be disclosed to person affected by the order.- (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government."

5. In reply, it has been submitted by Mr. L.R. Pujari, Ld. A.G.P. that there is merely a passing reference of the transactions of August 1996 vis-a-vis the stock register, which has been referred to in the grounds of detention. In my opinion, this submission is not a correct submission, if the ground no. 7(1) of the grounds of detention appearing at Annexure-B is perused. There is a positive reference with regard to the specific

breach of the licence in the context of the purchase of the particular Rayda stock and non-mention thereof in the stock register in the said ground. It would, therefore, be obvious that there has been a specific reliance placed upon the stock register of August 1996 by the detaining authority. Hence, non-supply of the said document alongwith the order of detention as per the statutory mandate contained in sec. 8(1) of the Act would vitiate the continued detention as complained of by the petitioner in the aforesaid ground of challenge.

6. Since the petitioner would succeed on the aforesaid ground of challenge against the continued detention under the impugned order of detention, it would not be necessary to deal with the other grounds of challenge as set out in the petition.

7. Following order is, therefore, passed :-

The continued detention under the impugned order of detention in so far as the present petitioner is concerned is held to be illegal. The same is quashed and set aside. The petitioner-detenu- Navnitlal Bhagwanji Tanna shall be forthwith set at liberty, if he is not required to be detained in any other case. Rule made absolute accordingly.

At the request of Mr. Prajapati, learned advocate for the petitioner, writ is directed to be sent to the Sabarmati Central Jail, Ahmedabad.

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